

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

CHARLES LEE THORNTON,
Plaintiff,

vs.

No. 4:07-CV-79 CDP

City of KIRKWOOD,
Defendant.

PRESENT: The Honorable Catherine D. Perry, Presiding
ATTORNEY FOR PLAINTIFF: Plaintiff appears pro se
ATTORNEYS FOR DEFENDANT: John M. Hessel and Jami L. Boyles

Rule 16 Conference

March 30, 2007

TERI HANOLD HOPWOOD
Registered Merit Reporter
Thomas F. Eagleton Courthouse
111 South Tenth Street
St. Louis, Missouri 63102

1 THE COURT: Good morning. We are here in the case
2 of Charles Lee Thornton versus the City of Kirkwood, case
3 number 4:07-CV-79, and Mr. Thornton is here appearing pro se,
4 and representing himself, and the Government -- I mean the
5 defendant is here and it's Mr. Hessel and Ms. Boyles
6 representing the City of Kirkwood.

7 Mr. Thornton, why don't you step up to the lectern and
8 let's go over a couple of things. One, I'd like to talk about
9 your motion for leave to amend your complaint, and then talk
10 to you about the joint proposed scheduling plan that you
11 submitted, but first I'd like to hear from you, anything you'd
12 like to say in response to the -- you filed your motion to
13 amend, and the defendant filed an opposition to that, and
14 rather than waiting for further briefing, do you wish to make
15 any further statements about your motion to amend and why you
16 think you should be able to do that?

17 MR. THORNTON: Yes, Your Honor. I wasn't aware
18 that the defendant had filed their -- I guess their response,
19 but in reference to me filing, the --

20 THE COURT: Wait a minute. They filed it on the
21 26th, and I'm sure they mailed it to you.

22 MR. HESSEL: We did, Your Honor.

23 THE COURT: At your address 351 Attucks Street. Do
24 you read your mail?

25 MR. THORNTON: Yes, Your Honor.

1 THE COURT: You're saying you never got this in the
2 mail?

3 MR. THORNTON: What I got was a letter and
4 information stating that they have not filed it yet, and
5 therefore I was waiting for them to file it, is the letter
6 that I received. So -- and it also stated that it may be an
7 example of what would be filed, so I have no idea exactly what
8 would be filed because the letter that came before the
9 documentation stated that it had not been filed, so I was
10 unaware of any filings.

11 THE COURT: Mr. Hessel, tell me, or whichever
12 counsel wishes to speak, tell me what you did send to the
13 plaintiff because I think I know what he's talking about based
14 on my reading of your brief.

15 MR. HESSEL: I'll be happy to, Judge. We sent to
16 him a letter pursuant to Rule 11, together with a motion for
17 Rule 11 sanctions, with a memorandum in support of the motion
18 for Rule 11 sanctions. In addition to that, we sent to him
19 the memorandum in opposition to his motion for leave to file
20 the amended complaint. That was all in one package.

21 THE COURT: In one letter, one envelope?

22 MR. HESSEL: Correct.

23 THE COURT: Okay, Mr. Thornton, come back. So in
24 that document, in other words, there was a letter that said
25 here is a motion for sanctions if you don't withdraw your

1 motion to amend, and then here is also the memorandum in
2 opposition to your motion to amend.

3 MR. THORNTON: Correct.

4 THE COURT: So they did, you did get it all.

5 MR. THORNTON: I got it all, but I was under the
6 illusion, because it stated that it would not be filed for 21
7 days, that it would not be on record, and therefore, I
8 wouldn't have to respond to it until it was filed, but if
9 you're saying it's filed, I did read it, so I'm aware of it.
10 I had no idea it was filed based on their letter stating that
11 it had not been filed.

12 THE COURT: There is two different things. What
13 they filed, the only thing they have actually filed in the
14 court file is a memorandum opposing your motion to amend. The
15 other thing that they sent you that said they weren't going to
16 file it yet was a proposed Motion for Sanctions, and under the
17 rule, they have to send that to you first to give you a chance
18 to change your mind and withdraw your motion for leave to
19 amend, and so they have given you that chance. Do you wish to
20 change your mind and withdraw your motion for leave to amend?

21 MR. THORNTON: No, Your Honor.

22 THE COURT: Then tell me why you think you should
23 be able to bring all these charges, and add these other
24 defendants at this point.

25 MR. THORNTON: Well, they were in on my original

1 filing, but the mistake on my part was that it was not
2 written. Now, I did not remove the "et al" from my
3 documentation, the clerk did, and had I known at that time all
4 I needed to do was add the individual defendants instead of
5 stating the City of Kirkwood, et al, unfortunately I was
6 explained later that the "et al" was like a nicety and allowed
7 instead of writing them all the time, only writing "et al."

8 THE COURT: But you didn't say anything about them
9 in your complaint. I've got it right here in front of me, and
10 all it says is you say defendants, plural, City of Kirkwood,
11 and you don't say anything about any other defendants, so even
12 though you've got "et al" in the heading, there is nothing in
13 your complaint that talks about and names all these other
14 people, so how can you say they were in here originally?

15 MR. THORNTON: Because in my understanding of why I
16 wrote, "the City of Kirkwood, et al," the City of Kirkwood is
17 those individuals, it is the Mayor. The City of Kirkwood did
18 not stop me, in my opinion, deny me the right to speak. It
19 was the Mayor and the City Council, and the City itself did
20 not arrest me, the Police Department did, under the authority
21 of the Chief of Police, and then the City Administrator, all
22 of them that were, as far as representing the City of
23 Kirkwood, made that decision, and my mistakenly not writing it
24 on the paper, and the clerk's choice to remove the "et al"
25 before the filing was the mistake. But my intention, and even

1 on the documentation it states the "et al," which I mistakenly
2 did not write the City of Kirkwood and then individually list
3 all the individuals, along with Attorney Hessel, who in my
4 opinion did conspire to stop me from speaking.

5 THE COURT: Okay. Well, your original -- the thing
6 you filed here, we need to know what your case is here that
7 we're talking about, and in the case that you filed, the
8 original complaint, you alleged that on May 18th of 2006, and
9 June 15th of 2006, that you were -- your First Amendment
10 rights were violated because you were not allowed to speak at
11 the meeting. Are you trying to in your proposed amended
12 complaint -- it's a little hard to figure out what you're
13 saying, but you seem to be saying that -- wanting to go back
14 all the way to 2001, or even farther, I'm not sure, and you
15 want to name a whole bunch of other people, and so it's not
16 just adding parties, you're also aiding claims, correct?

17 MR. THORNTON: The parties itself would be on the
18 first part, them denying me to speak. The second part would
19 be adding the claim, yes, Your Honor.

20 THE COURT: That's not what your amended complaint
21 says. So what is it -- tell me what the new complaint is that
22 you're trying to bring.

23 MR. THORNTON: The new complaint is the issue with
24 the City of Kirkwood, which I have proven as far as document
25 fraud in speaking with them at the City Council meeting, one

1 attempt of them denying me to speak, because I believe they
2 are tired of hearing me speak the truth of documentation, and
3 with the filing of the other court issues, and denying to
4 settle with me, or with relationship to their issues of the
5 City of Kirkwood's actions.

6 THE COURT: Well, what is it you think you're suing
7 for? What do you think was done wrong to you and what are you
8 trying to get?

9 MR. THORNTON: Okay. I believe the first issue
10 with the City of Kirkwood, Mayor, City Council, Attorney
11 Hessel being the City Attorney, and the Chief of Police, I
12 believe I was wronged with them denying my First Amendment
13 right to free speech.

14 THE COURT: When did this happen?

15 MR. THORNTON: The two dates --

16 THE COURT: May 18th and June 16th of 2006?

17 MR. THORNTON: Those two occasions, correct.

18 THE COURT: Okay.

19 MR. THORNTON: And the other count was constantly
20 trying to get them to acknowledge the wrong, and now just
21 filing in the court to try to be heard to correct the wrong
22 that was I believe not corrected in the lower court.

23 THE COURT: Explain that. I have no idea what you
24 just said or what that means.

25 MR. THORNTON: I filed in the lower court, and I

1 was denied, and now I'm filing in the federal.

2 THE COURT: I'm not an Appellate Court. This is
3 not the Court of Appeals. The Federal Court does not rule on
4 whether the state courts or municipal courts did the right
5 thing. There is no jurisdiction to do that. Do you
6 understand that?

7 MR. THORNTON: Yes, I thought I had, I thought my
8 federal question was with the lower court. Well, I still
9 understand as far as what you're saying you're not an
10 appellate court for them.

11 THE COURT: There is no tort called refusal to
12 settle. There is no -- you can't sue somebody for not
13 settling a case. It simply is not a cause of action, so I'm
14 going to deny your motion for leave to amend. I think that it
15 is on its face frivolous legally, and I think it is just
16 improper for a whole bunch of reasons. There is no legal
17 basis for it whatsoever, in terms of adding these claims.

18 You admit that it has been -- the issues going back
19 into the prior time have been litigated in the state courts,
20 and you know, you have remedies in the state courts if you
21 think that they did something wrong there, there is appeals
22 and things like that, but this Federal Court is not a Court of
23 Appeals, so we're going to proceed on your original complaint
24 which seeks to recover injunctive relief from the City of
25 Kirkwood to allow you to speak, right? That's what you're

1 asking for in the original complaint?

2 MR. THORNTON: Yes, that's the original complaint.
3 I'm also denied it as far as adding them to the original
4 complaint, the individuals?

5 THE COURT: You have to make some allegations
6 against the individuals, and you haven't done that. You have
7 to show that they individually did something in violation of
8 your constitutional rights, and you're saying that it was the
9 whole city who did it, right?

10 MR. THORNTON: Well, that's where the problem is
11 because I said the City and I did not write the individuals.
12 The City itself didn't.

13 THE COURT: Tell me what each of these people did
14 to you that you think violates your constitutional rights.

15 MR. THORNTON: The Mayor and the City Council did
16 discuss banning me from speaking after I was stopped from
17 speaking at the City Council meetings, along with Attorney
18 Hessel, and therefore, that's why they are together as far as
19 under the umbrella of the City of Kirkwood, but the
20 individuals made the statements in reference to banning me
21 from speaking with Attorney Hessel stating that it can be
22 done.

23 THE COURT: Okay. Mr. Hessel, let me hear your
24 response on this issue of whether he should be able to join
25 the individuals on the limited claims he has brought in the

1 original complaint.

2 MR. HESSEL: Thank you, Your Honor. I appreciate
3 the Court trying to get clarity as to what Mr. Thornton has
4 been trying to allege. Let's talk about the plaintiff needs
5 to show a causal link of the deprivation of his rights by
6 asserting factual allegations against the individual
7 defendants. You just heard him say that there was a
8 discussion among the City Council members and the Mayor with
9 myself about whether or not he could be banned from Council
10 meetings because of his disruptive behavior. The result of
11 that discussion was that I advised the City Council that they
12 could not ban him from Council meetings, that they had to
13 allow him to appear, to attend, and to speak, and to the
14 extent that he became disruptive, then we had to take action
15 on an individual basis. That's the extent of the conversation
16 relating to the banning. That took place at a public meeting

17 THE COURT: And Mr. Thornton was there, he heard
18 the discussion?

19 MR. HESSEL: I believe he was, but I'm not certain
20 of that. We also discussed it in executive session, and I
21 don't recall whether he was there at that secondary meeting.
22 My memory, Judge, and I'm doing this from memory, so I
23 apologize if my memory is inaccurate, my recollection is that
24 on June 15th there was a discussion about banning
25 Mr. Thornton. I don't believe that Mr. Thornton was present

1 during that discussion because he had already been taken out
2 of the Council meeting because he was being disorderly.

3 THE COURT: Tell me if we limit this to May 18th,
4 2006, and June 15th, 2006, why shouldn't he be able to add the
5 individuals who ordered him removed on those two dates as
6 individual defendants in the case?

7 MR. HESSEL: The only individual that directed
8 Mr. Thornton to take a seat was the Mayor, who presides over
9 the meeting. The Mayor advised Mr. Thornton on at least two
10 occasions, both on May 15th -- May 18th and June 15th, that
11 the manner in which he was speaking and the subject matter
12 upon which he was speaking was inappropriate.

13 Addressing them individually, on the first meeting, May
14 the 18th, that was when there was a public hearing, I don't
15 recall candidly who the presenter was, but it was a
16 multi-million dollar project to improve one of the nursing
17 homes in the City of Kirkwood, and Mr. Thornton's comments to
18 the applicant, to the developer was whether or not they
19 understand that the City of Kirkwood has a slave mentality, or
20 words to that effect. The Mayor asked him on at least two
21 occasions, "Do you have any relevant questions concerning this
22 proposal," and when he finally acknowledged that he didn't,
23 the Mayor said, "Have a seat," and Mr. Thornton sat down in
24 the Council chamber and refused to take a seat. That's why he
25 was taken out, and that has been adjudicated, and he was found

1 guilty of disorderly conduct at that municipal level, as well
2 as the Associate Circuit Court as to both of those occasions,
3 May 18th and June 15th.

4 Subsequent to that, and I'm doing this from memory, I
5 believe it was subsequent to June 15th, but it may have been
6 intervening, I just don't recall the timing of it, but clearly
7 there was a discussion about whether or not the City Council
8 could ban him from the meetings, prohibit him as a blanket ban
9 from speaking at any other meetings, or taking any other
10 action against him to try to control the disorderly conduct
11 that he was engaging in, and the answer was you cannot ban
12 him, he has a First Amendment right, you cannot ban him from
13 attending nor ban him from speaking, and the ultimate decision
14 has been to adopt rules and procedures to in essence
15 memorialize rules and procedures that have been in existence
16 close to 30 years that I've been representing the City.
17 That's the extent of it, and my problem with his motion to
18 amend to add additional parties is that as you know, Judge,
19 there's no factual allegations whatsoever against these
20 individual defendants.

21 For example, Chief Plumber. Chief Plumber was not even
22 present at either one of these meetings, so there is no basis
23 whatsoever to allege that Chief Plumber somehow was involved
24 in prohibiting him from speaking. As the Chief of Police,
25 were his officers involved in escorting him out of the Council

1 chambers, literally dragging him out of the Council chambers?
2 The answer to that question is of course yes, and that's
3 because he was engaged in disorderly conduct for which he has
4 been found guilty on two separate occasions.

5 Mike Brown, who is the Chief Administrative Officer,
6 was present at the Council meeting, but he took no action
7 whatsoever. The members of the City Council outside of Mayor
8 Swoboda took no action whatsoever, didn't say -- well, I take
9 it back. One Council member did complain about the language
10 that Mr. Thornton was using, but only Mayor Swoboda was the
11 one that stopped him from speaking.

12 As the City Attorney, I took no action whatsoever,
13 other than to represent the City and to advise the City
14 Council as to how they could try to control Mr. Thornton and
15 his behavior at Council meetings.

16 THE COURT: Let me ask you this, and I'll have
17 Mr. Thornton come up and speak in a minute, but this goes to
18 the issue of scheduling. Mr. Thornton did file, as he was
19 required to do, a joint proposed scheduling plan, and as it
20 did comply with the rules, and it did set out the differences
21 in agreement that you all had over the discovery schedule, my
22 question to you though is assuming this case remains as the
23 original complaint reads, in your opinion, is this case ripe
24 for summary judgment now?

25 MR. HESSEL: I would candidly, Judge -- I'm not

1 sure it's ripe for summary judgment because I'm still -- until
2 this morning when you were asking him questions on the record,
3 I was uncertain as to what his actual allegations were. Now
4 that we have a record as to what his contentions are, rather
5 than me taking a deposition, we have it on the record, I
6 believe it is ripe for summary judgment.

7 THE COURT: Okay, Mr. Thornton, come on up and
8 let's talk about this. Your complaint is that on these two
9 occasions, you were not allowed to speak, or they stopped you
10 from speaking.

11 MR. THORNTON: Yes, Your Honor.

12 THE COURT: And what Mr. Hessel is saying is that I
13 shouldn't allow you to add other people first because you
14 don't have any allegations against them, and second, because
15 any amendment would be futile because you were actually
16 convicted of disorderly conduct for both of those occasions.
17 Is that correct?

18 MR. THORNTON: All of it is not correct. What is
19 correct is your last statement is that I was convicted in the
20 municipality and St. Louis County on the disorderly conduct
21 issue, who did separate me speaking and me refusing to leave,
22 so my being found guilty was based on me refusing to leave,
23 not me being denied to speak. They separated it. The same
24 thing that was in the municipality. The Judge in Kirkwood is
25 not even concerned with what I said, but that I refused to

1 leave was the issue, so he found me guilty in Kirkwood and
2 also was found guilty in St. Louis County based on not me not
3 being able to speak, but because I refused to leave, that was
4 the disorderly conduct charge, as if I came in during a
5 meeting, sat down and refused to leave.

6 I was there after I was asked to speak, and Attorney
7 Hessel has just committed perjury in reference to him not
8 being associated with the decisions and what was said. When
9 the City, when I believe Joe Godi asked and made a motion to
10 have me banned from speaking, and then they had discussion
11 about it, Attorney Hessel did state, "Yes, we can ban
12 Mr. Thornton from coming and speaking at City Council
13 meetings," so him making a statement that he did not say, or
14 that he did say, "We cannot ban Mr. Thornton" is a straight
15 out lie.

16 THE COURT: Are these meetings recorded?

17 MR. THORNTON: Yes, there are, Your Honor.

18 THE COURT: Is there a recording of them?

19 Mr. Hessel, are there recordings?

20 MR. HESSEL: There are tape recordings, Your Honor.
21 They are not videotaped or anything like that.

22 MR. THORNTON: And the recording states that
23 Attorney Hessel states, "Yes, we can ban Mr. Thornton from
24 speaking."

25 THE COURT: Well, here is what we're going to do.

1 Your complaint is going to be limited to the original
2 complaint you filed. I'm going to deny the motion to amend to
3 the original defendants because I believe that any further
4 amendment would be futile, and therefore there is no reason to
5 add it and to complicate this case by adding in and serving a
6 whole bunch of defendants and coming back and finding out that
7 you don't have any allegations against them. What you are
8 claiming is that your First Amendment rights have been
9 violated, and were violated on the dates of May the 18th of
10 2006, and June 15th of 2006.

11 Let me take your schedule and plan that you have
12 proposed, and let's just start with all of the issues. You
13 say that you should have until the end of this year to amend
14 your pleadings and additional parties. What would be the
15 purpose of that?

16 MR. THORNTON: Your Honor, I have no problem with
17 just adjusting it the way the City has it at this time, and
18 just go right through with it.

19 THE COURT: Okay, and the Rule 26 disclosures, you
20 suggested that you would make those disclosures by August of
21 this year, and the defendant said April. Why do you need
22 until August to make your disclosures?

23 MR. THORNTON: I don't need till August. I would
24 like to make it the same time.

25 THE COURT: Expert witnesses, do you expect to call

1 expert witnesses?

2 MR. THORNTON: Yes, Your Honor.

3 THE COURT: What kind of expert witnesses do you
4 expect to call?

5 MR. THORNTON: The expert witness, well, once
6 again, that was based on the filing of the amended petition,
7 so now that the expert witness, Your Honor, it would just be
8 based on my mental and physical examination, which Attorney
9 Hessel feels I really need the mental part, so that would be
10 the only --

11 THE COURT: You would be presenting evidence of
12 your own mental condition?

13 MR. THORNTON: No, a mental -- an expert stating my
14 mental condition, and physical.

15 THE COURT: You would be calling a psychiatrist or
16 a doctor to testify at trial and make some opinions about your
17 own mental state?

18 MR. THORNTON: Correct.

19 THE COURT: What would that be relevant to?

20 MR. THORNTON: Relevant to just the issues of going
21 through the harassment of being arrested and violation of my
22 civil rights.

23 THE COURT: And do you have such a person? Have
24 you received treatment for this?

25 MR. THORNTON: No, I have not.

1 THE COURT: There has been no treatment?

2 MR. THORNTON: No.

3 THE COURT: Well, if you were going to call any
4 expert witnesses, then you would need to disclose them and
5 provide reports by June the 6th. I find it a little
6 confusing, but basically, if you do that, and you decide to
7 call -- I don't get this. I mean, the physical or mental exam
8 part of your proposed plan, it says, "Plaintiff believes
9 necessary both physical and mental examinations. Defendant
10 believes no physical and mental examinations are necessary and
11 opposes the dates." The physical or mental examination is
12 usually where one party makes the other side submit to an
13 examination by the opposing party's expert. In other words,
14 if you were suing and claiming emotional distress, Mr. Hessel
15 could go hire an expert witness and force you to sit down and
16 be examined by a psychiatrist, but it does not work the other
17 way. You can't have the City of Kirkwood examined by a
18 psychiatrist, you can't have the City of Kirkwood examined by
19 a medical doctor. If you're choosing to go get your own
20 examination and introduce that evidence for some reason, I
21 mean, that's up to you, but I just don't understand what
22 you're suggesting here by this plan.

23 MR. THORNTON: That's exactly what I'm suggesting,
24 that I would go based on the aggravation and anguish that I've
25 gone through with these issues with the City of Kirkwood, John

1 Hessel, the Mayor, and the City Council, and Chief of Police,
2 I feel I have been damaged, and therefore, that's why I wanted
3 to have the examinations.

4 THE COURT: Okay. If you decide to have an expert
5 witness testify, you must disclose expert witnesses and
6 provide the report by June the 6th. After that, if defendant
7 wishes to have a mental or physical examination of you
8 conducted, they will request that by June 15th, and have that
9 completed by July 15th, and the defendant's expert would then
10 need to be disclosed by August 1st and have their report by
11 that date.

12 What kind of depositions, what discovery do you need to
13 take, Mr. Thornton, in order to prove your case, or get ready
14 for trial?

15 MR. THORNTON: Well, Your Honor, based on what
16 you've just decided, that changes just about everything, so
17 the depositions that I would be taking would be from the City
18 Council members, John Hessel, who made the statement of
19 perjury already, that I would like to have also recorded in
20 the deposition, and the Mayor, because even what Attorney
21 Hessel is trying to recall by memory seems to escape him
22 because I always have a presentation and a question to ask
23 when I spoke before the City Council, and so the Mayor
24 continued to interrupt me from finishing my presentation, and
25 then he just told me to sit down, and that's when I refused to

1 sit down, and I sat down until I was allowed to speak. They
2 chose not to allow me to speak, and then they arrested me.
3 That was the issue. It wasn't like he asked me to ask a
4 question, and I went blank. That's not the issue. But those
5 would be the ones that I would be deposing; the Mayor,
6 Attorney Hessel, and Joe Godi, and the Council members, Jim
7 Lynch, Connie Karr, Art McDonald, Tim Griffin, I think that is
8 it.

9 THE COURT: You understand that it's your
10 obligation when you take the depositions to pay for the court
11 reporter and the means of recording them, etcetera, right?

12 MR. THORNTON: Yes, Your Honor.

13 THE COURT: You have to do that. You set them up,
14 you pay for it, you understand that?

15 MR. THORNTON: I understand, Your Honor.

16 THE COURT: Let me hear from you, Mr. Hessel, and
17 let me see if the schedule I'm proposing is not exactly what
18 you all have proposed, but I'm thinking there are ways to
19 shorten this and get it moving. If I had your expert -- if
20 you have an expert, that's by August 1st, and then is there
21 any reason we can't complete all the discovery in this case by
22 October 1st?

23 MR. HESSEL: I don't think there is any reason why
24 we could not, Your Honor.

25 THE COURT: We'll have dispositive motions by

1 October 15th, and then I will set the case for trial in
2 February sometime, I don't have the precise date, but I'll
3 give you a trial date. If there are earlier motions to be
4 filed, I would encourage you to do that.

5 Mr. Thornton, what I'm going to do is send out a case
6 management order that will have all the dates in here that set
7 out the deadlines. You are representing yourself. You are
8 required to comply with the Rules of Civil Procedure. I
9 especially want you to understand that if the defendant files
10 a motion, you must respond to that motion within the time
11 limits set under the Rules of Civil Procedure, and the local
12 rules of the Court. If you don't respond to a motion that's
13 filed, then there is a good chance I'll grant that motion.

14 I would expect that the defendant may be filing a
15 prompt motion for summary judgment. Perhaps they will do the
16 depositions first, depositions or discovery first, that's
17 really up to them, but I want to warn you that you need to
18 file your response to that motion when it comes in. I'm not
19 going to let you expand your claims because, you know, given
20 what I know about the prevailing law and as I understand your
21 claims, they appear to be ripe for summary judgment, given
22 especially that you were convicted of disorderly conduct on
23 these occasions, perhaps. I haven't researched the law.
24 Perhaps you can still claim that your First Amendment rights
25 were violated, but you know, you're going to need to research

1 the law and see what you can prove, and I can just tell you
2 that you need to read the law. You need to understand what
3 the cases provide, and what there is a legal remedy for.

4 When you file claims such as failure to settle, which
5 just doesn't even exist, that makes the Court wonder whether
6 you're really just playing games with us here because nobody
7 has a duty to settle anything with anybody else. There is no
8 tort of failure to settle. That makes me wonder why you're
9 even here, but you have stated a claim so far, and it's
10 limited to those two incidents of your First Amendment --
11 violations of your First Amendment rights.

12 There is a lot of law on this. You can go to the
13 library and do research. You can also -- if you need to see
14 the local rules, or the Federal Rules of Civil Procedure, they
15 are available on our court's website, and so you can go to the
16 public library if you don't have access to the internet at
17 home and use their computers to access the website or do any
18 other research you need to do.

19 I will send out a case management order that
20 incorporates these deadlines. I may not have been as specific
21 about all of them as I normally would be, but please read the
22 order and it will tell you what you need to know.

23 MR. HESSEL: Can I impose upon you in order to
24 avoid conflict with Mr. Thornton down the road, one thing you
25 did not address was interrogatories. As you know, I proposed

1 three interrogatories. We proposed a presumptive limit of 25,
2 I don't know that we need those, but the defendants are
3 prepared to live with the presumptive limit, but I don't want
4 Mr. Thornton to walk out of here thinking that he can file 300
5 interrogatories against us.

6 THE COURT: You can't, and I did see that that was
7 in the plan. I apologize. We're not going to have 300
8 interrogatories. The presumptive limit of ten depositions and
9 25 interrogatories will apply in the case.

10 MR. HESSEL: I'd ask for clarification.
11 Mr. Thornton has already indicated that he intends to take my
12 deposition and depositions of others. As you can imagine, we
13 would be filing motions to quash with respect to certain
14 depositions that he may be filing, and again, I beg the
15 Court's indulgence to avoid conflict with Mr. Thornton down
16 the road, I want him to understand and the Court to understand
17 that we would be filing such motions in the event he elects to
18 proceed with depositions, which I suggest are completely
19 irrelevant and immaterial, and the last point, Your Honor, I'm
20 prepared to respond to Mr. Thornton's accusation of perjury if
21 you need me to do so for clarification. I don't think I need
22 to do it.

23 THE COURT: I'm sure the records will be what they
24 are, and there will be evidence of the fact since there is a
25 recording of these meetings, and that makes it easier so we

1 wouldn't necessarily have to rely on people's memories.

2 MR. HESSEL: My only problem with that is I think
3 they only keep those tapes for six months. I know that we
4 kept the tapes on May 18th and June 18th. I don't know if we
5 kept recordings beyond six months. They recycle them, as you
6 can imagine, so I don't know what's back there in August,
7 July, June. Obviously, we'll check.

8 THE COURT: Well, what I would expect is that you
9 would, as part of your initial disclosures, produce any that
10 exist, and then we'll go from there. So, I don't think you
11 need to respond. We'll wait and see where we go. But, yeah,
12 I understand that there may be motions related to discovery,
13 but we'll just take that as it comes. Court is in recess

14 (A recess was taken.)

15

16 REPORTER'S CERTIFICATE

17 I, TERI HANOLD HOPWOOD, RMR, Official Court Reporter
18 for the United States District Court for the Eastern District
19 of Missouri do hereby certify that the foregoing is a true and
20 correct transcript of the proceedings had in this cause as
21 same appears from my stenotype notes made personally during
22 the progress of said proceedings.

23 /S/ Teri Hanold Hopwood, RMR
24 TERI HANOLD HOPWOOD, RMR
25 Official Court Reporter